

## Memorandum 2022-16

**Statutes Made Obsolete by Trial Court Restructuring (Part 9):  
Update on Lassen County Issue (Gov't Code § 76101.5)**

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In a tentative recommendation issued in 2019, the Commission proposed to amend Government Code Section 76101.5, which relates to financing of court facilities and criminal justice facilities in Lassen and Los Angeles Counties.<sup>1</sup> After receiving comments on the tentative recommendation, the Commission withdrew that amendment from its proposal, for further consideration at a later date.

This memorandum revisits the proposed amendment of Section 76101.5. It is organized as follows:

- Historical background.
- The amendment of Section 76101.5 proposed in 2019.
- Comments on the proposed amendment.
- Retraction of the proposed amendment.
- Current status.

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1. See Tentative Recommendation relating to *Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities* (Feb. 2019) (hereafter, "*Court Facilities TR*"), at 19, 44-45. Unless otherwise indicated, all further statutory references in this memorandum are to the Government Code.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

To receive electronic notification when new materials relating to this study are released, please subscribe at <http://www.clrc.ca.gov/J1408.html> (scroll to bottom of webpage for instructions).

## HISTORICAL BACKGROUND

Historically, California's trial courts were county-operated and each county was responsible for providing and maintaining its own trial court facilities.<sup>2</sup> However, under the Lockyer-Isenberg Trial Court Funding Act (enacted in 1997)<sup>3</sup> and the related Trial Court Facilities Act (enacted in 2002),<sup>4</sup> the judicial branch became primarily responsible for operating trial courts and trial court facilities, instead of the counties.<sup>5</sup>

Thereafter, each county transferred its court facilities (and responsibility for maintaining those facilities) to the state. The court facilities transfers were essentially completed by the end of 2009.<sup>6</sup>

### THE AMENDMENT OF SECTION 76101.5 PROPOSED IN 2019

Due to the court facilities transfers and other trial court restructuring reforms, many statutes relating to court facilities became obsolete, in whole or in part. In 2019, the Commission circulated a tentative recommendation proposing to revise numerous such provisions to reflect the trial court restructuring reforms.<sup>7</sup>

Among the proposed reforms was the following amendment of Government Code Section 76101.5:

**Gov't Code § 76101.5 (amended). Transfers between Courthouse Construction Fund and Criminal Justice Facilities Fund in county of 1st or 47th class**

SEC. \_\_\_\_\_. Section 76101.5 of the Government Code is amended to read:

76101.5. Notwithstanding any other provision of this article or Article 3 (commencing with Section 76200), following a public hearing, the board of supervisors of a county of the first class ~~or a county of the 47th class which~~ that has established both a Courthouse Construction Fund and a Criminal Justice Facilities Construction Fund pursuant to the provisions of this chapter may

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2. See *Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities*, 46 Cal. L. Revision Comm'n Reports 25, 29-30 (2019) (hereafter, "TCR6: Court Facilities") & sources cited therein.

3. 1997 Cal. Stat. ch. 850. See generally Gov't Code §§ 77000-77655.

4. 2002 Cal. Stat. ch. 1082. See generally Gov't Code §§ 70301-70403.

5. See *TCR6: Court Facilities*, *supra* note 2, at 31-33.

6. *Id.* at 33.

7. See *Court Facilities TR*, *supra* note 1.

by resolution provide for the transfer of deposits from one fund to the other.

**Comment.** Section 76101.5 is amended to reflect:

(1) The enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655) and the related Trial Court Facilities Act, 2002 Cal. Stat. ch. 1082 (see generally Sections 70301-70508).

(2) The closure of the Courthouse Construction Fund for Lassen County.

The section is also amended to make a technical correction.

See Sections 28020 (Lassen County population is 14,960), 28068 (county with population of more than 14,600 and less than 15,000 is county of 47th class), 28085 (when new federal census is taken, county remains in old classification until reclassified by Legislature).<sup>8</sup>

The preliminary part (narrative portion) of the tentative recommendation explained:

*Lassen and Los Angeles Counties.* Section 76101.5 authorizes “a county of the first class or a county of the 47th class” (i.e., Los Angeles County or Lassen County) to transfer deposits from its Courthouse Construction Fund to its Criminal Justice Facilities Construction Fund and vice versa. Lassen County no longer has a Courthouse Construction Fund, so the Commission recommends amending this section to delete the reference to “a county of the 47th class.”<sup>9</sup>

The Commission’s conclusion that “Lassen County no longer has a Courthouse Construction Fund” was based on information in a document prepared by the Judicial Council.<sup>10</sup>

#### COMMENTS ON THE PROPOSED AMENDMENT

In response to the tentative recommendation, Robert Burns (then serving as Lassen County Counsel) informed the Commission that the proposed

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8. See *id.* at 44-45.

9. *Id.* at 19 (footnotes omitted).

10. See Judicial Council of California, *Receipts and Expenditures from Local Courthouse Construction Funds: Report to the Budget and Fiscal Committees of the Legislature* (12/18/17), Attachment 12. A copy of this report is attached to the First Supplement to Memorandum 2018-31.

amendment was premature because Lassen County still had a Courthouse Construction Fund:

[T]he tentative recommendation contemplates a statutory change which would eliminate Lassen’s Courthouse Construction Fund. The premise of the recommendation is that “Lassen County no longer has a Courthouse Construction Fund” ....

I have been assured by my elected Lassen County Auditor, Ms. Diana Wemple, that Lassen *does* have a Courthouse Construction Fund into which funds continue to be deposited. An inquiry has begun to determine the source of these funds and the legitimacy of their continued collection. In the meantime, May 1 (deadline for submission of comments) is coming soon and I wanted to report to you that it appears premature to make this statutory change until we know more.<sup>11</sup>

Similarly, Charles Martel (Supervising Attorney for the Judicial Council) said:

[N]otwithstanding the [Judicial Council document], it appears that Lassen County may still be holding funds in its Courthouse Construction Fund. The county and Judicial Council are currently discussing the transfer of those funds to the state pursuant to section 70402. Though the county’s ability to transfer funds from its Courthouse Construction Fund to its Criminal Justice Facilities Construction Fund pursuant to section 76101.5 is almost certainly not relevant to resolution of that issue, in light of those on-going discussions, it might be wise to briefly delay the proposed revision to section 76101.5 through a short sunset clause (the five year sunset clause proposed with respect to section 70624 on page 20 of the Tentative Recommendation seems too long to be used in this case).<sup>12</sup>

#### RETRACTION OF THE PROPOSED AMENDMENT

In light of the input from Messrs. Burns and Martel, the staff recommended against proceeding with the proposed amendment of Section 76101.5 in 2019.<sup>13</sup> The staff suggested two alternative possibilities:

- (1) Delete the proposed amendment of Section 76101.5 from the Commission’s proposal and revisit it at another time.<sup>14</sup>
- (2) Delete the proposed amendment of Section 76101.5 from the Commission’s proposal and replace it with a sunset clause

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11. Memorandum 2019-36, Exhibit p. 2 (emphasis in original).

12. *Id.* at Exhibit p. 7.

13. *Id.* at 5.

14. *Id.*

approach along the lines suggested by Mr. Martel.<sup>15</sup> Under such an approach, Section 76101.5 would be amended to insert a sunset clause that would repeal the section on a specified date. In addition, a new Section 76101.5 would be added to the codes, which would track existing law but would not refer to “a county of the 47th class.” That version of Section 76101.5 would become operative on the same date that the other version would be repealed.<sup>16</sup>

The Commission discussed these options in May 2019. It decided to delete the proposed amendment of Section 76101.5 from the Commission’s proposal and revisit it at another time (Option #1).<sup>17</sup>

With that revision and other changes, the Commission approved a final recommendation on *Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities*.<sup>18</sup> The proposed legislation was enacted in 2020.<sup>19</sup>

#### CURRENT STATUS

Section 76101.5 has not been revised since the Commission last examined it in 2019, almost two years ago. To obtain an update on the status of the Lassen County Courthouse Construction Fund, the staff recently reached out to representatives of the following organizations:

- (1) Lassen County.<sup>20</sup>
- (2) Lassen County Superior Court.
- (3) Judicial Council.

As yet, we have no new information to share with the Commission. We are hopeful that one or more updates will be forthcoming at or before the upcoming meeting. **We will keep the Commission posted on this matter.**

Respectfully submitted,

Barbara Gaal  
Chief Deputy Director

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15. *Id.* at 5-6.

16. See *id.*

17. Minutes (May 2019), p. 4.

18. *Id.* at 4-5.

19. See 2020 Cal. Stat. ch. 210 (AB 1984 (Maienschein)).

20. Robert Burns recently retired, so the staff contacted his replacement, Amanda Uhrhammer. We copied Bruce Ross (District Director for State Senator Brian Dahle) on the message to Ms. Uhrhammer, because he has previously communicated with Lassen County officials about Section 76101.5 and has been monitoring the situation.